

QUESTIONS AND ANSWERS on NPDES Appeal

updated December 27, 2007

What action is the South Florida Water Management District taking?

On June 15, 2007, U.S. District Court Judge Cecilia Altonaga ruled that a federal National Pollutant Discharge Elimination System (NPDES) permit is required by the South Florida Water Management District to continue operating pumping stations S-2, S-3 and S-4 located in Palm Beach County for regional flood control and water supply purposes.

In compliance with that order, the District is applying to the Florida Department of Environmental Protection for an NPDES permit. The District is also filing a Notice of Appeal to the Judge's order.

What new developments occurred this month?

On December 14, the District filed its appellate brief with the court. That same day, the U.S. Government, represented by the Department of Justice, filed a brief in agreement with the District position.

On December 26, nine states and dozens of agencies and organizations met the deadline to file *amicus curiae* ("friend of the court") briefs. These briefs emphasize to the court the case's serious and widespread impacts. The *amici* represent a wide range of interests, including the National League of Cities, the National Hydropower Association, the American Farm Bureau Federation, 23 water resource organizations and the Florida Department of Environmental Protection.

Why is the District appealing the Court's decision?

The intention of the appeal is to address the issue of governance and jurisdiction.

The appeal is not an attempt to circumvent regulations, avoid permits, lessen protection for the environment or reinforce back-pumping activities. The District maintains that it is not appropriate for federal permit requirements to trump a state's ability and right to manage the water resources of the state.

Are the S-2, S-3 and S-4 structures already regulated?

Yes. The S-2, S-3 and S-4 structures are operated under a State permit in full compliance with State law. Florida's Lake Okeechobee Protection Act, passed in 2000, required the South Florida Water Management District to obtain a State permit for operating the structures that move water around the lake.

Does the State permit protect water quality?

Yes. The five-year State permit under which the structures are regulated establishes specific, science-based pollutant targets and a suite of measures necessary to help achieve a protective water quality limit of phosphorus. It also includes comprehensive monitoring and restricts the transfer of water into Lake Okeechobee from the Everglades Agriculture Area at the S-2 and S-3 structures, requiring the District to coordinate and report back-pumping activities to the Department of Environmental Protection. The District is in full compliance with the permit. A NPDES permit offers Lake Okeechobee no additional protective measures.

Why is the District then also applying for a NPDES permit?

The District is complying with the Court's direction to apply for a federal permit.

What are NPDES permits for?

Authorized by federal law in the Clean Water Act, NPDES permits are used to regulate the discharge of pollutants into U.S. waters and are most commonly required for industrial or municipal purposes, such as factories.

NPDES permits are not designed to control the movement of water strictly for water management purposes, such as flood control and water supply. The permit application does not include a category for movement of surface water by water management agencies.

The U.S. Environmental Protection Agency had previously advised the District that no NPDES permits were required for the S-2, S-3 and S-4 structures. The District's position on this issue is supported by the United States of America, represented by the U.S. Department of Justice, as well as the State of Florida and water resource entities from other states.

What does this have to do with the current water shortage?

This appeal and the permit application are jurisdictional issues between the state and federal government. They are not related to the current water shortage.

On August 8th, the South Florida Water Management District's Governing Board held a public workshop on Lake Okeechobee water supply issues and alternatives. The workshop brought together experts to explore technically-feasible ways to augment water supply to Lake Okeechobee and to openly address concerns about back-pumping. As a result of the workshop, the Board voted against back-pumping to augment water supply during this current water shortage.

What is the District doing to protect and restore Lake Okeechobee?

Since 2001, the State has invested more than \$140 million to improve farming practices, construct wetlands and implement phosphorus reduction technologies to improve the health of Lake Okeechobee. Conservation and nutrient management activities collectively cover 400,000 acres of farmland in the watershed where best farming practices and farm treatment projects are improving water quality.

In 2005, the State also initiated the Lake Okeechobee and Estuary Recovery Plan, dedicating \$200 million to expand water storage areas, construct treatment marshes and expedite environmental management initiatives.

This year, the Florida Legislature unanimously passed legislation to expand the Lake Okeechobee Protection Act to safeguard and restore the entire northern Everglades system, including the Lake Okeechobee watershed as well as the Caloosahatchee and St. Lucie rivers and estuaries. Over the next two years, the law calls for the development of far-reaching plans to protect and improve the quality, quantity, timing and distribution of water in the northern Everglades ecosystem. This year alone, the District will dedicate \$199 million to benefit the northern Everglades and the lake.

Together with the Comprehensive Everglades Restoration Plan, these efforts are fast-tracking construction projects to provide additional water storage, reduce harmful discharges to coastal estuaries and reduce the flow of phosphorus into the lake. The District is also pursuing alternatives for additional storage, including actively pursuing water storage sites on public and private lands in the Okeechobee basin.

Most recently, the District completed an \$11 million effort to improve water quality and restore habitat by removing and disposing of 1.9 million cubic yards of phosphorus-rich muck from the lake.

Now that briefs are filed, what happens next?

Legal briefs from the District, U.S. Government and *amici* have been filed. Briefs from the plaintiffs, followed by a response brief from the District, will be prepared for the court in the coming months. Oral arguments will then be heard by a three-judge panel, and a decision on the appeal will be made. The likely timeframe for a decision is late 2008.